

NOV 02 2006

EMPLOYER STATUS DETERMINATION
Marquette Rail, LLC

This is the determination of the Railroad Retirement Board concerning the status of Marquette Rail, LLC (MQT), as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding MQT was provided by Eric M. Hocky, counsel for MQT. According to Mr. Hocky, MQT is owned by Marquette Rail Corporation (60%), Transportation Solutions, Inc. (10%), Rick Jany (1%), Rick Cecil (9%), Farmrail System, Inc. (12%), Progressive Rail, Inc. (4%) (a covered employer; B.A. No. 4651), and Huron Leasing Corp. (4%) (a covered employer; B.A. No. 9240). MQT began operations on November 11, 2005, and as of December 31, 2005, had 28 employees who were first compensated on August 14, 2005. Fourteen of these employees were formerly employees of CSX Transportation, Inc. (CSXT); their first day of service was November 8, 2005.

In Surface Transportation Board (STB) Finance Docket No. 34728, MQT filed a notice of exemption to lease and operate approximately 129.03 miles of rail line from CSXT. MQT interchanges with CSXT, a covered employer under the Acts (B.A. Number 1524). MQT serves approximately 21 active customers and hauls chemicals, paper products, salt, grains, fertilizers, lumber, and plastics. It is anticipated that MQT will handle a total of 14,000 carloads in 2006. MQT certified to the STB that its projected revenues will not exceed those that would qualify it as a Class III rail carrier.

Section 1(a) (1) of the Railroad Retirement Act (45 U.S.C. § 231(a) (1)), insofar as relevant here, defines a covered employer as:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad *

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Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RTTA) (26 U.S.C. § 3231).

The evidence of record establishes that MQT is a carrier operating in interstate commerce. Accordingly, it is determined that Marquette Rail, LLC is an employer within the meaning of section 1(a) (1) (i) of the Railroad Retirement Act (45 U.S.C. § 231(a) (1) (i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of August 14, 2005, the date as of which it first had employees. Cf. Rev. Ruling 82-100, 1982-1 C.B. 155 (wherein the IRS held that a company became an employer subject to the RTTA the date it hired employees to perform functions directly related to its carrier operations).

Original signed by:

Beatrice Ezerski
FOR THE BOARD
Secretary to the Board